IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION(MAIN) No.264 OF 2006

Shri Ram S. S. Parihar,
R/o Shree Darshan
Davolim, Ponda
Goa 403 401 ... Applicant

versus

1. Smt. Suniti Bhadauria
2. Shri Ravi Shankar Singh Bhadauria
3. Mrs. Reena Singh Bhadauria
   Both residents of 2,
   Namdar Manzil,
   4th Pasta Lane, Colaba,
   Mumbai 400 005
4. State of Goa,
   Through Public Prosecutor. ... Respondents

Mr. P. P. Singh, Advocate for the Applicant.

Ms. Winnie Coutinho, Public Prosecutor for the Respondent No.4.

Mr. I. Aga, Advocate for the Respondent Nos.1 to 3.

CORAM : N. A. BRITTO, J.

DATE : 20TH APRIL, 2007.

ORAL ORDER

This petition, invoking extraordinary jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 has been filed by the complainant

against Order dated 15-1-2006 of the learned Additional Sessions Judge by which the Order dated 5-1-2005 of the learned J.M.F.C., Ponda issuing process against the accused under Section 499/500 has been set aside.

2. The parties hereto shall be referred to in the names as they appear in the cause title of the said complaint.

3. The complainant is the father-in-law of A-1/Smt.Suniti Bhadauria. A-2/Ravi Shankar Singh Bhadauria and A-3/Mrs.Reena Singh Bhadauria are the parents of the said daughter-in-law who met the complainant's son Sushil for the first time on 8-6-2002 and thereafter they got civilly married on 23-4-2003 which marriage was registered before the Civil Registrar, Ponda, Goa and subsequently on 26-5-2003 by vedic rights but unfortunately to live together in the same house only for a period of five months, one day. From 28-10-2003 they have been living separately and if according to the complainant his said daughter-in-law A-1/Smt.Suniti abandoned the conjugal domicile, according to the said A-1/Smt.Suniti she was kicked out from the matrimonial house.

4. Their marriage has been subsequently dissolved by the Family Court at Bandra, Mumbai on the ground of cruelty under Section 13(1) of the Hindu Marriage Act, 1955 by Judgment dated 24-12-2004. The said petition before the Family Court at Bandra, Mumbai was filed by A-1/Smt. Suniti. It is stated that the complainant's son the said Sushil has also filed a Civil Suit for restitution of conjugal rights which is pending before the Court at Ponda, Goa.

5. The complaint by the complainant came to be filed on 12-10-2004 but it appears that prior to that on or about 1-5-2004 A-1/Smt. Suniti had filed a case against the complainant and others under Section 500 r/w 34 IPC bearing No.34/SW/04 before the 47th Additional Chief Metropolitan Magistrate, Esplanade, Mumbai. There was yet another case filed by A-1/Smt.Suniti on 20-2-2004 under Sections 498-A, 406, 420 r/w 34 IPC against the complainant, his wife and his two daughters. The said case was registered under No.58/Misc/04. There was yet another case filed at the instance of A-1/Smt. Suniti on or about 5-3-2004 at Cuffe Parade Police Station also under Sections 498, 406, 420 r/w 34 IPC.

6. At the out-set, it may be stated that the complaint filed by the complainant related to three incidents.

7. The first was in relation to a letter dated 24-7-2004 sent by Chaturvedi & Chaturvedi, Advocates, on behalf of A-2/Mr. Ravi and A-3/Smt.Reena. This letter dated 24-7-2004 was sent as a reply to the notice dated 28-6-2004 sent by the complainant by which the complainant inter alia, had demanded a sum of Rs.3,91,253/- as the amount which was required to be paid by them of the expenses made in connection with the celebration of marriage. It is fairly conceded, on behalf of the complainant, that A-1/Smt.Suniti had no involvement in the defamatory statements made in the said letter dated 24-7-2004.

8. The second incident related to a letter dated 1-9-2004 written by the same Advocates to Shri G. G. Sadhale who at the relevant time was a Director of M/s. Goa Indo Gas and Appliances Ltd. of which the complainant was the Managing Director. This letter dated 1-9-2004 was sent by the said Advocates in reply to letter dated 14-8-2004 which was in reply to their legal notice sent to one Mr. Joaquim R. Rodrigues dated 21-7-2004. As far as the alleged defamatory statements in this letter dated 1-9-2004 are concerned, they had no relation whatsoever to A-2/Shri Ravi Shanker or A-3/Smt. Reena Singh as fairly conceded on behalf of complainant.

9. The third incident relates to certain defamatory allegations made by A-1/Smt.Suniti in her Matrimonial Petition No.A-1331/2004 which was filed before the Family Court at Bandra, Mumbai and again the said alleged defamatory statements had no connection with her parents namely A-2/Ravi Shankar and A-3/Smt. Reena. The said petition/plaint was filed in Mumbai, and no doubt that it was filed against the complainant's son Sushil with his address at Ponda, Goa. However, it is important to note that there is no whisper in the complaint that the said petition/plaint was received either by the complainant or the complainant's son within the jurisdiction of the J.M.F.C., Ponda, so as to give the latter the jurisdiction to issue process against the accused. The mere fact that the said petition carried the address of the complainant's son at Ponda, Goa was per se insufficient to conclude that the said petition/plaint was circulated either to the complainant or the complainant's son at Ponda, Goa.

10. The facts reproduced hereinabove clearly show that the first two incidents could not have been the subject matter of one complaint and it was necessary for the complainant to have filed separate complaints as regards the said three incidents and as far as the third incident is concerned at the place where the said plaint was filed, in the absence of any averments in the complaint or in the statement on oath of the complainant that the said complaint or petition was received by the complainant or his son within the jurisdiction of the J.M.F.C., Ponda.

11. Be that as it may, and, as regards the first incident the said Advocates Chaturvedi & Chaturvedi wrote the said letter dated 24-7-2004 to Advocate Shri Shrikant Nayak on behalf of the parents i.e. of A-2/Shri Ravi and A-3/Smt.Reena. The said letter dated 24-7-2004 was addressed to Advocate Shri Shrikant Nayak who was the Advocate of the complainant and what was stated in the said letter which the complainant alleges has defamed him, inter alia, is as follows:

> "17. Our clients had reliable information, which he believes to be true that your client's elder son got married earlier with a Christian girl whose parents had given huge dowry to your client but your client had thrown her out usurping her all Stridhan, Jewellery etc. worth lakhs of rupees. Ultimately, she left India and gone abroad. Despite this suppressing these facts, your client got remarried his elder son who committed bigamy without divorcing his earlier wife. Our clients

> are gathering more evidences on this information. Similar/Indus operandi adopted in case of our client's daughter. Now your client wants to remarry again Mr. Sushil as to lure another rich girl and to demand and get dowry again, so he will get 4 times encashments of his sons(Bearer Cheques as per his words) this is illegal emmidiately so called Business man of Goa".

12. The complainant claims that he is a businessman of repute. Everyone is entitled to have a very high estimate of oneself but the essence of the offence of defamation is the harm caused to the reputation of a person. Character is what a person actually is and reputation is what neighbours and others say he is. In other words, reputation is a composite hearsay and which is the opinion of the community against a person. Everyone is entitled to have a very high estimate of himself but reputation is the estimation in which a person is held by others. The complainant claimed that his name has been maligned and he is being looked down by friends, family members, neighbours, etc. but the complainant examined none in support of the said allegation. It was necessary for the complainant to have examined someone who after having read the contents of the so-called defamatory statements thought that the complainant's reputation was thereby affected. The evidence in this respect was totally hearsay and in this view of the matter also no process could have been issued against the accused. On behalf of the accused reliance has been placed on **M/s. Pepsi Foods Ltd. and another** v. **Special Judicial Magistrate and others**(1998 CRI.L.J. 1). The observations of the Apex Court in that case are squarely applicable to the case at hand. Summoning of an accused in a criminal case is

a serious matter. Criminal Law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of the allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused. It is contended that all that was required of the complainant was only to make out a prima facie case for the issue of process under Section 499/500 IPC. In my view, no process could have been issued based entirely on hearsay evidence.

13. Next, as far as this incident is concerned, on behalf of the accused, it is contended that there was no publication, even if it is considered that para 17 of notice dated 24-7-2004 contained defamatory statements since the said letter was sent by the Advocates of the parents of A-1/Smt.Suniti to the Advocate of the complainant. It is further submitted that in case Advocate Shri Shrikant Nayak, on behalf of the complainant, chose to show the said letter to his junior or

his Office staff, A-2/Shri Ravi and A-3/Smt.Reena cannot be blamed for the same. On behalf of the accused, reliance has been placed on **P. R. Ramakrishnan** v. **S. Sastrigal and another**(AIR 1988 Kerala 18) and also on **B. P. Bhaskar** v. **B. P. Shiva**(1993 Cri.L.J. 2685) wherein the decision in the first case has been followed.

14. As already stated, the said letter dated 24-7-2004 was sent as a reply to the notice dated 28-6-2004 sent on behalf of the complainant demanding from the parents of A-1/Smt. Suniti the said sum of Rs.3,91,253/- and the reply dated 24-7-2004 was sent on behalf of the said parents A-2/Shri Ravi and A-3/Smt. Reena by their Advocates. In my view, the said letter dated 24-7-2004, assuming it contained defamatory statements of the complainant was sent by the parents of A-1/Smt. Suniti to the complainant himself, through their respective lawyers. There was no third person involved. In the first case of **P. R. Ramkrishnan v. S. Sastrigal and another**(supra), it has been stated that sending of a communication to an Advocate on behalf of his client is virtually a communication made to the client himself and as such there is no publication of the imputation concerning the client. It also may be stated that in this case it was also held that a dictation given by a lawyer to his clerk and the transcription made by him of a per se libellous matter cannot amount to publication. The same view was followed in the second case of **B. P. Bhaskar** v. **B. P. Shiva**(supra) by the Madras High Court stating that the receipt of a notice by the complainant by itself is not sufficient to amount in law as “publication” and as such there was no cause for launching of the prosecution as no publication

ensued. It may be noted that for Sections 499/500 to be attracted there must be making or publication of any imputation concerning any person by words either spoken or intended to be read, or by signs or by visible representations intending to harm, or knowing or having reason to believe that such imputation may harm, the reputation of such person. In other words, for the offence of defamation to be completed there must be making or publication of an imputation concerning any person and the making or publication must be with intent to harm or knowing or having reason to believe that such imputation may harm, the reputation of such person. The complainant tried to get out of this situation by making a further allegation that when he went to meet the Advocate, his Advocate as well as his Office staff started questioning him about the contents of the said notice and it was expressed by all of them that it was a heinous act on the part of the complainant and that the junior Advocate, the staff of Advocate concerned appeared to have nursed a feeling of distress for the complainant, but the complainant failed to translate the said allegations in his statement on oath and all that he stated was that he was detained before Advocate S. Nayak, his family members and his staff and that though he had requested Advocate S. Nayak to give a notice of defamation to the accused, he declined to do so. In fact, nothing prevented the complainant, to have examined either Advocate Nayak or for that matter his junior Advocate or any member of his staff to substantiate what the complainant alleged in the complaint and unless the said allegations were translated into statement on oath there was no question of the learned J.M.F.C. having issued process against the accused and much less against A-1/Smt. Suniti as far as the first incident was concerned.

15. The second incident relates to letter dated 1-9-2004. As per the complaint, the complainant stated that on or around 3rd or 4th September, 2004 the complainant received a telephone call from Shri G. G. Sadhale, Director of Indo Gas and Appliances Ltd, Ponda, Goa and the complainant was informed by the said Sadhale that he had received a notice addressed to him on behalf of the accused no.1. The said notice was in reply to a letter dated 14-11-2004 addressed by Shri G. G. Sadhale to Chaturvedi & Chaturvedi, Advocates. In the said notice, it was alleged that the complainant had made dowry demands against A-1/Smt. Suniti and that he had tortured A-1/Smt. Suniti that he is intending to kill A-1/Smt. Suniti and/or to arrange her murder by paid hirer(hired person). The complainant also referred to para (g) of the said notice dated 1-9-2004 wherein according to the complainant it was falsely alleged that a purported declaration dated 2-8-2004 posted from Deccan Gymkhana Pune drafted by the complainant and his sons with intention to kill accused no.1 and/or to arrange for her murder by paid hirer person by the complainant and his wife. Shri Sadhale upon receipt of the said notice dated 1-9-2004 started questioning the complainant as to how an educated person like him had stooped down to such a level that he could attempt to get rid of his daughter-in-law and that the said Sadhale also expressed to the complainant that he believed the said contents as they were contained in the legal notice sent on behalf of the accused no.1, etc.

16. As far as this aspect of the case is concerned, the complainant in his statement on oath stated that on or around 3rd/4th September, 2004, he received a telephone call from Shri G. G. Sadhale, Director of Goa Indo Gas and Appliances Ltd. alleging therein that he had demanded dowry from A-1/Smt. Suniti and her family and was intending to kill her and that he had arranged hired killer and had accumulated gas cylinders in the basement of his house to kill her. No doubt the complainant produced the said letter dated 1-9-2004 along with statement on oath which according to the learned Counsel appearing on behalf of the complainant, the complainant had received a copy of the same from a Police Constable, a copy of the same having been marked to Assistant Commissioner of Police, Ponda, Goa but it is conceded on behalf of complainant that what is stated by the complainant in statement on oath reproduced herein before does not form part and parcel of the letter dated 1-9-2004 and therefore the production of the letter dated 1-9-2004 is of no assistance to the case of the complainant. The complainant chose for reasons best known to himself not to examine the said Sadhale, the Director of his Company to support prima facie his allegation in the said statement on oath and which was nothing but hearsay and on that basis no process could have been issued against the accused unless the said Shri Sadhale to whom the said letter was sent was examined in support of the case of the complainant.

17. As regards the third incident, complainant's daughter-in-law A-1/Smt. Suniti made the following statement in her said petition for divorce:-

> “41. The petitioner states that during her stay period at Matrimonial home five months one day she had noticed that respondent and his father are unlawfully storing inflammable gas cylinders in godown below Shree Darshan to show petitioner's death by accident and to kill her in night time on objecting for impermissible such illegal storage by petitioner the respondent had abused and assaulted physically the petitioner”.

18. There can be no two opinions that the said averments were made by A-1/Smt. Suniti to support her claim on the ground of cruelty to obtain a divorce from her marriage with the complainant's son. On behalf of the accused, it is submitted that all averments in relation to the ground of cruelty have been admitted by the complainant's son and that is reflected in the Judgment dated 24-12-2004 of the Family Court at Bandra, Mumbai in the said Matrimonial Petition No.A-1331/2004. It can be seen from the copy of the Judgment produced, that the learned Family Court, has observed that the averments in the petition have remained uncontroverted and the written statement was not filed for more than 90 days after the service of summons and despite three specific directions and adjournments given for filing the same. The learned Family Court observed that consequently the averments in the petition remained uncontroverted. The Family Court also held that the statements of the

petitioner(A1) in her examination in chief had remained uncontroverted and so also the documents tendered by the petitioner had also not been challenged. Therefore, the Family Court decreed the said petition and dissolved the marriage between the complainant's son Sushil and A-1/Smt. Suniti. It is to be noted that the averments of para 41 of the divorce petition were not only against the complainant but also against complainant's son the said Sushil and the said Sushil himself chose not to controvert the same nor prosecute A-1/Smt. Suniti for defamation and it is the complainant who has chosen to file a case for defamation. At this stage, it may also be stated that in para 57 of the said petition, A-1/Smt. Suniti had alleged that her husband was a drunkard, chain smoker, womanizer, going with different girls and hence was responsible solely for non consummation of marriage. Again, it may be observed that the complainant's son chose not to controvert the said serious allegations made against him but it is the complainant who chose to file the complaint for the said averments made in the said petition before the Family Court at Bandra, Mumbai. The averments of para 41 were made by A-1/Smt. Suniti to support the ground to obtain divorce from the complainant's son and indeed she has obtained a divorce. The said averments having been deemed to have been admitted by the complainant's son and therefore there was no question of the complainant filing any criminal complaint against A-1/Smt. Suniti based on the said averments. It is to be noted that one of the ingredients of Sections 499/500 IPC is that the imputation must have been made with the intention of harming or knowing or having reason to believe that it will harm the reputation of the person concerning whom it is made.

14. In view of the above, I find there is no merit in this petition and consequently the same is hereby dismissed.

N. A. BRITTO, J.

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